

RESOLUTION 44-2008

AN ORDER ABANDONING/CLARIFYING THE ABANDONMENT OF A POSSIBLE COUNTY ROAD

A petition to abandon potential county road/public easement in conjunction with Resolution 6-2008 was filed with the Board of County Commissioners of Jefferson County, Montana (hereinafter, the "Board"), by Dorothy Hill (the affected landowner); John Kinnick; Cathy Brimhall; Daniel Brimhall; Barbara Goll; Bruce Bannon; Mary Bannon; Mike Shossoc; Jan Schossoc; Elizabeth Burns; Rick Abraham; Theresa Abraham; Scott Allen; Gayle Allen; and Greg Duncan. This petition was initially filed with the Clerk and Recorder and certified on November 7, 2008 as a Petition For Abandonment of Potential County Road/Public Easement within Jefferson County, Clarks Gulch/Clarks Creek Road. The description of the subject possible County road/public easement is set forth as follows:

It is a possible road that may lay across any portion of Dorothy Hills property in Section 17, Township 9 North, Range 3 West which may further be described as TRACT BY M&B'S IN LOT 17 CONT 2.56 ACRES of Section 17 of T09NR03W. This abandonment is specifically intended to abandon any public easement upon Hill's property that may or may not exist in furtherance of Resolution 6-2008.

Pursuant to Title 7, Chapter 14, Part 26, MCA, and pursuant to County Policies and Procedures to Establish, Change, Abandon, Or Discontinue a Road in Jefferson County Adopted April 6th, 1983 the Board made a preliminary review of the subject Petition on November 25, 2008. The Petition was certified by the Clerk and Recorder and the Board found that the petition was submitted by the landowner affected by the petition as well as by at least ten freeholders of the road district and found that said petition described the particular portions of the road thereof to be abandoned, the general route thereof, and the lands and owners affected by the proposed abandonment.

The Board further determined that the consent of the owner of the affected lands was endorsed upon the Petition by her execution of the same and that the Petition set forth the necessity or an advantage of the petitioned action. That advantages listed by the Petitioner included that the alleged road is not visible from any place on the ground and further has not been in use by the public since before 1960, the roadway is not necessary as there is an improved

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gravel road that accesses the residents and properties at the head of Jackson Creek at this present time and Dorothy Hill has her own driveway, the possible roadway to be abandoned does not block access to public property, the Hill property has never been an access point to BLM land, any BLM property can be accessed up Holmes Gulch as well as through a road accessing the original Big Indian Mine that is admitted as a County road by the landowner of the property (Joseph Schmaus) containing the Big Indian Mine, the only affected landowner of this clarification of abandonment is Dorothy Hill, and said abandonment is necessitated by the fact any historic public easement across the Hill's property does not now exist and should be abandoned as was the original intention and determined to be the right course of action in the original petition for abandonment that has already been ordered in Resolution 6-2008 and which all other affected landowners already benefit from.

Therefore, the Board ordered that the feasibility, desirability, and cost of granting the prayer of the Petition, and the merits or demerits of the proposed abandonment be investigated. In this regard, the Board appointed Commissioner Tom Lythgoe a County Commissioner and Melissa Morris, GIS Mapping Tech and designee to accompany Tom Lythgoe as the County does not have a surveyor, to conduct the investigation. On Tuesday, December 2nd, 2008, Commissioner Lythgoe and Melissa Morris reported that they investigated the factual basis for recommendation of the petition and recommended that the petition be granted.

The Board considered the Petition and the findings of Commissioner Weber's and Joe Carter's investigation. Commissioner _____ moved to approve the closure of said road, hereinafter described:

It is a possible road that may lay across any portion of Dorothy Hills property in Section 17, Township 9 North, Range 3 West which may further be described as TRACT BY M&B'S IN LOT 17 CONT 2.56 ACRES of Section 17 of T09NR03W. This abandonment is specifically intended to abandon any public easement upon Hill's property that may or may not have previously existed historically in furtherance of Resolution 6-2008.

The Board found that the granting of the relief sought in the Petition was in the best interest of the County as the County could not find sufficient evidence to prove said historical roadway was in fact a County road historically and opening said roadway would cost additional money for the Jefferson County Road Department as well as create additional litigation in regards to its affect upon other landowners' rights to private property, was both feasible and

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desirable for the use and benefit of the public as no costs would be attributed to the County through abandonment and alternative access exists for area landowners, would not cause any increase in costs to the public, and could be done without detriment to the public interest as the public has access to BLM property via the remaining historic Clark Creek loop accessed via Holmes Gulch and Tucker Gulch as well as access to public lands through the Big Indian Mine road which was declared a County road by the area landowner (Joe Schmaus) through and Tucker Gulch. Further, the Commission found that there is access to BLM property via Jefferson County road, Holmes Gulch and from Tucker Gulch a county road originating in Lewis and Clark County. Taking those roads provides access to the Big Indian Mine Road a Jefferson County Road that accesses Joe Schmaus property and BLM property. Holmes Gulch and Tucker Gulch also provide access to the remainder of Clark Creek/Gulch roads not abandoned which also provide access to Schmaus property and BLM property. Further, per Fifth Judicial District Court Stipulated Order dated June 1, 2004 in DV-02-10027, there would also be access from Clark Creek Road from the west across Bompert's land into BLM property via the created easement in settlement of that court case (See attached Judgment).

Upon such basis, the Board determined that the Petition should be granted and that an appropriate Order should be entered.

Therefore **IT IS HEREBY ORDERED** as follows:

1. That the petition to abandon potential county road/public easement in conjunction with Resolution 6-2008 was filed with the Board of County Commissioners of Jefferson County, Montana (hereinafter, the "Board"), by Dorothy Hill (the affected landowner); John Kinnick; Cathy Brimhall; Daniel Brimhall; Barbara Goll; Bruce Bannon; Mary Bannon; Mike Shossoc; Jan Schossoc; Elizabeth Burns; Rick Abraham; Theresa Abraham; Scott Allen; Gayle Allen; and Greg Duncan is hereby granted.

2. That the portion of the said Jefferson County road which is abandoned by this Order is more particularly described as:

It is a possible road that may lay across any portion of Dorothy Hills property in Section 17, Township 9 North, Range 3 West which may further be described as TRACT BY M&B'S IN LOT 17 CONT 2.56 ACRES of Section 17 of T09NR03W. This abandonment is specifically intended to abandon any public

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easement upon Hill's property that may or may not have previously
existed historically in furtherance of Resolution 6-2008.

DATED this 2nd day of December, 2008.

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

KEN WEBER, CHAIR

CHUCK NOTBOHM, COMMISSIONER

TOMAS E. LYTHGOE, COMMISSIONER

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